IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5952 OF 2004

Nasir Shaikh Abdul Gaffar Shaikh and another. ..Applicants.

V/s.

The State of Maharashtra ..Respondent.

Shri S.R. Pasbola for the Applicants.
Shri K.V. Saste, APP for the Respondent State.

WITH

CRIMINAL APPLICATION NOS. 1326 OF 2005, 1327 OF 2005 AND 1328 OF 2005

The State of Maharashtra ..Applicant.

V/s.

Nasir Shaikh Abdul Gaffar Shaikh ..Respondent.

Shri K.V.Saste, APP for the Applicant-State.
Shri S.R.Pasbola for the Respondent.

CORAM : A.M.KHANWILKAR, J.
DATED : MARCH 09, 2005

PC :-

1. This common order will dispose of all the above numbered four Applications.

2. The application No. 5952/2004 has been filed by the Accused named in C.R. NO. 270/2004,

registered with Nirmal Nagar Police Station for offence punishable under section 326 read with 114 of I.P.C. for bail. While this application was pending, the State has filed companion three Applications i.e. Application Nos. 1326, 1327 and 1328 of 2005 for cancellation of bail granted to Applicant No.1 in three criminal cases, pending against him, essentially on the ground that while on bail in C.R. NO. 315/2000, the said Applicant No.1 Nasir Shaikh Abdul Gaffar Shaikh has committed succesive cognizable and non-bailable offences registered against him, being C.R. Nos. 374/2001, 171/2002 and the present offence being C.R. No. 270/2004.

3. I shall first deal with the application for bail preferred by the applicants.

4. Insofar as Applicant No.1 is concerned, there is material to indicate the complicity of the applicant in the commission of the crime in question. In that sense, I concur with the view taken by the lower court in rejecting the bail application of the Applicant No. 1. That by itself is a ground to refuse bail. In addition, it has come on record that there are already three pending criminal cases against

the said Applicant and while on bail in those cases, the applicant indulged in further offences, as referred to above. This is an additional ground for refusing bail to the applicant No.1.

5. To get over this position, the counsel for the applicants submits that the previous criminal cases registered against the applicant No.1 being C.R. Nos.315/2000, 372/2001 and 171/2002 are not for offences of very same type as in C.R. No. 270/ 2004 (i.e. Section 326 r/w. 114 of I.P.C.) and therefore, the same cannot be reckoned while considering the present application. To buttress this submission, reliance is placed on the decision of this court in Babulabai & Ors. vs. Shankar & Ors. reported in 1999 ALL MR (Cri) 1724. Indeed, in para 10 of the said decision, this court had an occasion to summarise various judicial pronouncements and culled out the principle expounded therein One of the condition for cancellation of bail as stated in clause (i)(a) is that if the person on bail, during the period of bail, commits the "very same offence" for which he is being tried or has been convicted.

6. Relying on this exposition, an argument is

advanced that in the present case, the applicant is not tried for the same offences punishable under sections 326, 114 of IPC, as in the present C.R. No. 270/2004. I find no substance in this argument. The expression "very same type of offences" does not mean that offence under the same provision, but will have to be understood as of successive offences which are cognizable and non-bailable. In other words, the conditions mentioned by this court in para 10 of the said reported decision, have no application to the fact situation of the present case. For the applicant has been found to have committed offences successively since registration of the first offence against him being C.R.No. 315/2000. All the subsequent offences registered, while the applicant No.1 was on bail in C.R. No. 315/2000, are, undoubtedly, in respect of cognizable and non- bailaible offences. That, in my view, is sufficient ground to refuse bail to the applicant No.1 in the present case being C.R. 270/2004.

7. Accordingly, prayer for bail made in Application No. 5952/2004 on behalf of the applicant No.1 will have to be rejected.

8. That takes me to the case of applicant No.2. In so far as applicant No.2 is concerned, there is clear evidence to indicate his complicity in the commission of the offence in question. He was wielding dangerous weapon (Chopper). He gave only one blow, as per the prosecution case, but the said blow was fatal on the head, causing incised wound, as noted in the injury certificate. Having regard to the seriousness of the offence and motive behind the offence, not a case for bail even for Applicant No.2.

9. Thus the prayer for bail made on behalf of the Applicant No.2 also will have to be rejected.

10. That takes me to the three applications filed by the State for cancellation of bail in favour of the applicant No.1 in other three offences pending against him being C.R. No. 315/2000 -for offence under sections 452, 323, 324, 506 (II) read with section 34 of the Indian Penal Code, C.R.No. 374/2001 for offence under section 379 of I.P.C. and C.R. No. 171/2002 for the offence punishable under sections 454, 457, 380 read with 34 of IPC.

11. It is submitted that while on bail in connection with C.R. No. 315/2000, the applicant No. 1 is found to have involved in successive offences registered in year 2001, 2002 and lastly in the year 2004. Though the applicant has been granted bail in connection with C.R. No. 374/2001 and in C.R.No. 171/2002, as he has indulged in offences while on bail in the earlier C.R. in respect of which bail has been granted, in my opinion, this is a fit case for cancellation of the bail of the applicant No.1 in all the said C.R.s'. Accordingly, all the three applications preferred by the State ought to succeed.

12. Accordingly, the application preferred by the accused in Criminal Application No. 5952/2004 for bail is rejected.

13. Criminal Application Nos. 1328/ 2005, 1327/ 2005 and 1326 of 2005 are allowed. Bail bonds are cancelled in the respective cases.

14. As prayer of bail has been rejected, it is necessary that the trial pending against the applicants in respect of C.R. No. 270/2004 is expedited. The trial court shall take necessary steps

to ensure early disposal of the trial, preferably by the end of December, 2005. Even the other cases pending against the said applicant, arising out of C.R.Nos. 315/2002, 374/2001, and 171/2002 respectively be expedited by the concerned trial courts.

15. In case, trial of the criminal cases pending against the applicants is likely to be delayed on account of the absconding accused, the concerned trial court will be well advised to separate the trial of the absconding accused and proceed with the trial of the present accused in accordance with law.

16. Ordered accordingly.

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